

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 10-0296

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RANDY LEE PLUMLEY,

Petitioner,

v.

MIKE MAHONEY,

Respondent.

FILED

JUL 28 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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**ATTORNEY GENERAL'S RESPONSE TO PETITION FOR  
A WRIT OF HABEAS CORPUS**

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In compliance with this Court's order of June 30, 2010, the Attorney General's Office responds to the petition for a writ of habeas corpus filed by Randy Lee Plumley.

**BACKGROUND**

Following entry of his guilty plea to Aggravated Kidnapping in September 1994, Plumley was sentenced to Montana State Prison for a period of 20 years, with 10 years suspended, Judge Larson presiding. (D.C. Doc. 99.)

In October 2005, the State filed a petition to revoke alleging that Plumley had violated various conditions of his suspended sentence. He admitted using marijuana and methamphetamine; he was involved in an altercation at a bar; he

violated the no-alcohol condition; and in September 2005, he was convicted by a jury of Criminal Mischief. (D.C. Doc. 161, Petition to Revoke, Report of Violation at 1-2.) In December 2005, the district court revoked Plumley's suspended sentence, committing him to the Department of Corrections (DOC) for a period of 10 years, with 7 years suspended. (D.C. Doc. 165, 12/14/05 Judgment.)

In June 2007, another petition to revoke was filed alleging that Plumley had violated various conditions of his suspended sentence, including conditions prohibiting Plumley from using alcohol and requiring him to remain law abiding. (D.C. Doc. 167, Report of Violation at 1-2.) The district court revoked Plumley's suspended sentence and committed him to the DOC for a period of 7 years, suspended. (D.C. Doc. 176, 9/12/07 Judgment.)

Following the filing of another petition to revoke in August 2008, Plumley was revoked and once again committed to the DOC for a period of 7 years, suspended. (D.C. Doc. 188, 10/27/08 Judgment.)

Finally, yet another petition to revoke was filed in December 2008. (D.C. Docs. 189.6, 196.) The revocation court again committed Plumley to the DOC for a period of 7 years, this time suspending 2 years. (D.C. Doc. 199, 2/25/09 Judgment.)

Plumley recently filed the instant petition for a writ of habeas corpus in this Court.

### **REASONS HABEAS RELIEF SHOULD BE DENIED**

The habeas petitioner has the burden of proving entitlement to habeas corpus relief, including providing a sufficient record to establish a prima facie case. Miller v. Eleventh Judicial Dist. Ct., 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186 (citing Petition of Dyer, 154 Mont. 499, 500, 463 P.2d 895, 896 (1969)).

Plumley raises three claims. First, relying upon State v. Williams, 2003 MT 136, 316 Mont. 140, 69 P.3d 222 and Speldrich v. McCormick, 243 Mont. 238, 794 P.2d 339, Plumley claims that the revocation court abused its discretion and violated Mont. Code Ann. § 46-18-203(7)(b) in connection with the court's revocation dispositions in 2005 and 2009. Williams and Speldrich hold that the revocation court must state its reasons for denying credit for street time. Plumley's claim is an objectionable sentencing matter which could have been raised at trial or on direct appeal. Therefore, the claim is procedurally barred. Mont. Code Ann. § 46-21-105(2) (postconviction procedural bar); § 46-22-101(2) (habeas procedural bar). The claim is also time barred. Mont. Code Ann. § 46-21-102(1) (postconviction time bar).

Second, Plumley claims that the revocation court's 2005 and 2009 dispositions violated Mont. Code Ann. § 46-18-203(7)(a), citing State v. Downing, 181 Mont. 242, 593 P.2d 43 (1979). Downing was overruled by State v. Docken, 274 Mont. 296, 908 P.2d 213 (1995). In Docken, the Court held that the revocation court can revoke and then reimpose the original sentence as long as the term of the sentence does not exceed the term of sentence originally imposed but suspended. Because Docken discusses Speldrich, which Plumley cites in support of his first claim for relief, Plumley presumably knew that Downing had been overruled. Plumley's claim is unproven and without merit. The claim is also procedurally barred and time barred.

Finally, Plumley seems to claim that because of the forgoing alleged sentencing errors, the revocation court did not have jurisdiction because he would have discharged his sentence in June 2009. He cites the holding in Felix v. Mahler, 195 Mont. 391, 636 P.2d 830, which has been superseded by statute. See State v. Morrison, 2008 MT 16, ¶ 17, 341 Mont. 147, 176 P.3d 1027. Because Plumley's other claims are without merit, untimely, and procedurally barred, Plumley's third claim is likewise without merit and barred.

## CONCLUSION

For the foregoing reasons, Plumley's petition for a writ of habeas corpus should be denied.

Respectfully submitted this 28th day of July, 2010.

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By: Mark W. Mattioli  
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**CERTIFICATE OF SERVICE**

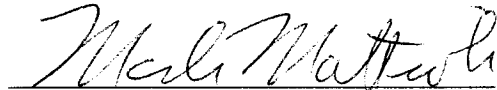
I hereby certify that I caused a true and accurate copy of the foregoing  
Response to Petition for Writ of Habeas Corpus to be mailed to:

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DATED: July 28, 2010

A handwritten signature in black ink, appearing to read "Mark Matthews", is written over a horizontal line.

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rules 11 and 14 of the Montana Rules of Appellate Procedure, I certify that this response to writ is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 4,000 words, excluding certificate of service and certificate of compliance.

  
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MARK W. MATTIOLI